

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Joshua Jordan,

Plaintiff,

v.

Payment Saver, LLC, and Casey Graham,

Defendants.

Civil Action No.: 4:24-cv-00890-JD-TER

**DEFENDANTS' RESPONSE TO
PLAINTIFF'S OBJECTIONS TO
MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION AND TO
PLAINTIFF'S EMERGENCY MOTION TO
STAY IMPLEMENTATION OF REPORT
AND RECOMMENDATION PENDING
REVIEW**

Defendants, Payment Saver, LLC ("Payment Saver") and Casey Graham ("Graham") (collectively referred to as "Defendants"), by and through their undersigned counsel, respectfully submit *Defendants' Response to Plaintiff's Objections to Magistrate Judge's Report and Recommendation and to Plaintiff's Emergency Motion to Stay Implementation of Report and Recommendation Pending Review*. Defendants note that Plaintiff's filings (D.E. Nos. 51 and 52) effectively seek the same relief – rejection of Judge Rogers' recommendation that this case be dismissed for lack of subject matter jurisdiction or, in the alternative, if the case is dismissed, that a tolling period be allowed for re-filing. Defendants have previously fully briefed whether the Court has subject matter jurisdiction and agree with the recommendation for dismissal. Likewise, Defendants have fully briefed whether an amendment could or should be allowed to cure a subject matter jurisdiction defect. Defendants submit this Response solely for the purpose of addressing new matters raised by Plaintiff.

Argument

(A) Case law cited by Plaintiff does not support a rejection of the Report and Recommendation.

Payment Saver, LLC is a citizen of South Carolina for diversity purposes. This fact is not in dispute. Since Plaintiff is also a citizen of South Carolina, the Court lacks subject matter jurisdiction. The Report and Recommendation recommends dismissal of the case, which is the Court's only option under the circumstances. The Report and Recommendation also correctly concludes that a court without subject matter jurisdiction lacks authority to rule on a motion to amend and, as such, Plaintiff's effort to amend his Complaint pursuant to the Federal Rules of Civil Procedure is improper. While Plaintiff pursues several avenues of opposition, none of Plaintiff's arguments or cases cited¹ support the position that this case should not be dismissed.

(B) Institution of a tolling provision is improper.

As alternative relief, Plaintiff requests institution of a 30-day tolling period, in the event of dismissal, within which Plaintiff can elect to file a new lawsuit against Defendants. Plaintiff provides no authority for the proposition that a tolling provision is proper. Specifically, Plaintiff cites to *Davis v. Piper Aircraft Corp.*, 615 F.2d 606 (4th Cir. 1980), a case that analyzes relation back of an amendment pursuant to Rule 15. At the end of the day, Plaintiff elected his forum. He decided to file his case in a court that lacked jurisdiction. Plaintiff has not cited – and Defendants are not aware of – any statutory or case law empowering the Court to tack on a tolling period to a potential dismissal. Just as the Court lacks authority to rule on a motion to amend, it also lacks authority to institute such an alternative remedy.

¹ The cases cited by Plaintiff generally fall in two categories: (1) they are inapplicable to the argument being presented; or (2) they do not stand for the proposition for which they are cited.

Conclusion

Defendants respectfully submit that Judge Rogers' Report and Recommendation should be accepted and that this case should be dismissed for lack of subject matter jurisdiction without any alternative relief requested by Plaintiff in the form of a tolling provision.

HEDRICK GARDNER KINCHELOE & GAROFALO LLP

By: s/Jonathan G. Roquemore
Joshua D. Shaw (Fed. ID. No. 10529)
Jonathan G. Roquemore (Fed. ID. No. 09160)
Hedrick Gardner Kincheloe & Garofalo LLP
1230 Main St., Suite 325
Columbia, SC 29201
Phone: 803-727-1200
jshaw@hedrickgardner.com
jroquemore@hedrickgardner.com

***Attorneys for Defendants Payment Saver, LLC
and Casey Graham***

November 13, 2024

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Joshua Jordan,

Plaintiff,

v.

Payment Saver, LLC, and Casey Graham,

Defendants.

Civil Action No.: 4:24-cv-00890-JD-TER

CERTIFICATE OF SERVICE

This is to certify that a copy of the *Defendant's Response to Plaintiff's Objections to Magistrate Judge's Report and Recommendation and to Plaintiff's Emergency Motion to Stay Implementation of Report and Recommendation Pending Review* has been served upon the following by mail on this 13th day of November, 2024.

Joshua Jordan
3223 Twin Church Road
Timmons ville, SC 29161
Pro se Plaintiff

s/Laurin Stevens
Laurin Stevens